

(e) *Improper distribution or loss of or damage of commodities.* State agencies shall take action to obtain restitution in connection with claims arising in their favor for improper distribution, use or loss, or damage of commodities in accordance with §§ 250.13 and 250.15 of this chapter.

(f) *Damaged or out-of-condition commodities.* The State agency shall immediately notify the appropriate Food and Nutrition Service Regional Office (FNSRO) if any commodities are found to be damaged or out-of-condition at the time of arrival, or at any subsequent time, whether due to latent defects or any other reason. FNSRO shall advise the State agency of the appropriate action to be taken with regard to such commodities. If the commodities are declared unfit for human consumption in accordance with § 250.13(f) of this chapter, they shall be disposed of as provided for under that section. When out-of-condition commodities do not create a hazard to other food at the same location, they shall not be disposed of until FNSRO or the responsible commodity contractor approves. When circumstances require prior disposal of a commodity, the quantity and manner of disposition shall be reported to the appropriate FNSRO. If any damaged or out-of-condition commodities are inadvertently issued to a household and are rejected or returned by the household because the commodities were unsound at the time of issuance and not because the household failed to provide proper storage, care or handling, the State agency shall replace the damaged or out-of-condition commodities with the same or similar kind of commodities which are sound and in good condition. The State agency shall account for such replacements on its monthly inventory report.

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(44 U.S.C. 3506)

[44 FR 35928, June 19, 1979, as amended at 47 FR 746, Jan. 7, 1982. Redesignated by Amdt. 1, 47 FR 14137, Apr. 2, 1982, and further redesignated at 64 FR 73384, Dec. 30, 1999.]

**§ 253.11 Administrative funds.**

(a) *Allocation of administrative funds to FNS Regional Offices.* Each fiscal year,

after enactment of a program appropriation for the full fiscal year and apportionment of funds by the Office of Management and Budget, administrative funds will be allocated to each FNS Regional Office for further allocation to State agencies. To the extent practicable, administrative funds will be allocated to FNS Regional Offices in the following manner:

(1) 65 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total number of participants nationally, averaged over the three previous fiscal years; and

(2) 35 percent of all administrative funds available nationally will be allocated to each FNS Regional Office in proportion to its share of the total current number of State agencies administering the program nationally.

(b) *Allocation of administrative funds to State agencies.* Prior to receiving administrative funds, State agencies must submit a proposed budget reflecting planned administrative costs to the appropriate FNS Regional Office for approval. Planned administrative costs must be allowable under part 277 of this chapter. To the extent that funding levels permit, the FNS Regional Office allocates to each State agency administrative funds necessary to cover 75 percent of approved administrative costs.

(c) *State agency matching requirement.* State agencies must match administrative funds allocated to them as follows:

(1) Unless Federal administrative funding is approved at a rate higher than 75 percent of approved administrative costs, in accordance with paragraph (c)(2) of this section, each State agency must contribute 25 percent of its total approved administrative costs. Cash or non-cash contributions, including third party in-kind contributions, and the value of services rendered by volunteers, may be used to meet the State agency matching requirement. In accordance with part 277 of this chapter, such contributions must:

(i) Be verifiable;

(ii) Not be contributed for another federally-assisted program, unless authorized by Federal legislation;

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(iii) Be necessary and reasonable to accomplish program objectives;

(iv) Be allowable under Part 277 of this chapter;

(v) Not be paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(vi) Be included in the approved budget.

(2) The State agency may request a waiver to reduce its matching requirement below 25 percent of approved administrative costs. In its proposed budget, the State agency must submit compelling justification to the appropriate FNS Regional Office that it is unable to meet the 25 percent matching requirement and that additional administrative funds are necessary for the effective operation of the program. The FNS Regional Office may, at its discretion, approve a reduction of the matching requirement and provide additional administrative funds to cover more than 75 percent of approved administrative costs to a State agency that provides compelling justification. In its compelling justification submission, the State agency must include a summary statement and recent financial documents, in accordance with FNS instructions. Compelling justification may include but is not limited to:

(i) The need for additional administrative funding for startup costs during the first year of program operation; or

(ii) The need to prevent a reduction in the level of necessary and reasonable program services provided.

(d) *Use of funds by State agencies.* Any funds received under this section shall be used only for costs that are allowable under part 277 of this chapter, and that are incurred in operating the food distribution program. Such funds may not be used to pay costs that are, or may be, paid with funds provided from other Federal sources.

(e) *Application for funds.* (1) Any State agency administering a Food Distribution Program that desires to receive administrative funds under this section shall submit form SF-424, "Application for Federal Assistance," to the appropriate FNS Regional Office at least three months prior to the beginning of a Federal fiscal year. The application

shall include budget information, reflecting by category of expenditure the State agency's best estimate of the total amount to be expended in the administration of the program during the fiscal year. FNS may require that detailed information be submitted by the State agency to support or explain the total estimated amounts shown for each budget cost category. As required by 7 CFR part 3015, Subpart V, agencies of State government shall submit the application for Federal assistance to the State clearinghouse before submitting it to the FNSRO. ITOs shall not be subject to this requirement.

(2) Approval of the application by FNS shall be a prerequisite to the payment of any funds to State agencies.

(f) *Availability of funds.* (1) FNS shall review and evaluate the budget information submitted by the State agency in relationship to the State agency's plan of operation and any other factors which may be relevant to FNS' determination as to whether the estimated expenditures itemized by budget category are reasonable and justified. FNS shall give written notification to the State agency of (i) its approval or disapproval of any or all of the itemized expenditures, (ii) the amount of funds which will be made available, and (iii) the period for which funds are available.

(2) FNS shall review and evaluate applications submitted by State agencies for administrative funds available under this section in the following order of priority and shall give preference in making payments of funds under this section in the same order of priority:

(i) Applications from State agencies which desire to continue a Food Distribution Program now in operation,

(ii) Applications from State agencies, in the order received, which FNS determines are immediately capable of effectively and efficiently administering the Program, and

(iii) Applications from other States agencies, in the order received.

(g) *Method of payment to State agencies.* (1) Payments are made to State agencies through a Letter of Credit or an advance by Treasury check. The Letter of Credit funding method shall

be used by FNS except when the advances to be made within a 12 month period are estimated to be less than \$120,000. However, FNS may, at its option, reimburse a State agency by Treasury check regardless of the amount in response to a valid claim submitted by the State agency.

(2) The Letter of Credit funding method shall be done in conjunction with Treasury Department procedures, Treasury Circular No. 1075 and through an appropriate Treasury Regional Disbursing Office (RDO). The Standard Form 183, "Request for Payment on Letter of Credit and Status of Funds Report," shall be correctly prepared and certified by a duly appointed official of the State for requesting payment from an RDO.

(3) The advance by Treasury check method shall be done by use of the Standard Form 270, "Request for Advance or Reimbursement," and procedures associated with its use. State agencies receiving payments under this method may request payments before cash outlays are made.

(4) Any State agency receiving payment under the Letter of Credit method or the advance by Treasury check method shall have in place and in operation, a financial management system which meets the standards for fund control and accountability prescribed in part 277 of this chapter, as amended. The State agency shall demonstrate on a continuing basis its willingness and ability to have and to function within procedures that will minimize the time lapse between the transfer of funds and its disbursement to meet obligations. For any State agency which does not meet the requirement of this paragraph, the reimbursement by Treasury check method shall be the preferred method for FNS to make payments to that State agency.

(h) *Accounting for funds.* Each State agency which receives administrative funds under this section shall establish and maintain an effective system of fiscal control and accounting procedures. Expenditures and accountability of such funds shall be in accordance with the appropriate provisions of part 277. The accounting procedures maintained by the State agency shall be such as to accurately reflect the re-

ceipt, expenditure and current balance of funds provided by FNS and to facilitate the prompt preparation of reports required by FNS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the State agency. Any budget revisions by a State agency which require the transfer of funds from an approved cost category to another shall be in accordance with the budget revision procedures set forth in OMB Circular No. A-102, Attachment K, and shall be approved by FNS prior to any transfer of funds.

(i) *Return, reduction, and reallocation of funds.* (1) FNS may require State agencies to return prior to the end of the fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to any State agency if FNS determines that:

(i) The State agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FNS and the provisions of this part, or

(ii) The amount of funds which the State agency requested from FNS is in excess of actual need, based on reports of expenditures and current projections of Program needs.

(iii) Circumstances or conditions justify the return reallocation or transfer of funds to accomplish the purpose of this part.

(2) The State agency shall return to FNS within 90 days following the close of each Federal fiscal year any funds received under this section which are unobligated at that time.

(j) *Records, reports, audits.* (1) The State agency shall:

(i) Keep such accounts and records as may be necessary to enable FNS to determine whether there has been compliance with this section, and

(ii) Adhere to the retention and custodial requirements for records set forth in § 277.4 of this chapter.

(2) The State agency receiving funds either through a Treasury RDO Letter of Credit system or Treasury check shall submit quarterly reports to FNS on Form SF-269, "Financial Status Report," by the 30th day after close of the reporting quarter and shall submit

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such other reports as may be required by FNS.

(3) The appropriate provisions of part 277 are adaptable to this section for additional guidance.

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(44 U.S.C. 3506)

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### PART 254—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

Sec.

254.1 General purpose.

254.2 Definitions.

254.3 Administration by an ITO.

254.4 Application by an ITO.

254.5 Household eligibility.

AUTHORITY: Pub. L. 97-98, sec. 1338; Pub. L. 95-113.

SOURCE: 49 FR 32756, Aug. 16, 1984, unless otherwise noted.

#### § 254.1 General purpose.

This part sets the requirement under which commodities (available under part 250 of this chapter) may be distributed to households residing in FNS service areas in Oklahoma. This part also sets the conditions for administration of the Food Distribution Program by eligible Oklahoma tribes determined capable by the Department.

#### § 254.2 Definitions.

(a) *Exercises governmental jurisdiction* means the exercise of authorities granted to ITOs under the Oklahoma Indian Welfare Act of 1936 or by BIA regulations (25 CFR part 81 et. seq.).

(b) *FNS service area* means the areas over which FNS has approved the food distribution program in Oklahoma, excluding urban places unless approved by FNS under 254.5(b).

(c) *Food Distribution Program* means a food distribution program for households on Indian reservations administered pursuant to section 4(b) of the

Food Stamp Act and 1304(a) of Pub. L. 97-98.

(d) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in § 253.2(d) of this title.

(e) *Indian tribal organization (ITO)* means (1) any Indian tribe, band, or group organized under the Oklahoma Indian Welfare Act of 1936, and which has a tribal organization approved by the Bureau of Indian Affairs; (2) a tribal organization established and approved under Federal regulations issued by the Bureau of Indian Affairs; or (3) an intertribal council authorized by eligible tribes to act in behalf of the tribes to operate the program.

(f) *Overissuance* means the dollar value of commodities issued to a household that exceeds the dollar value of commodities it was eligible to receive.

(g) *State agency* means the ITO of an Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, or an agency of State government, which enters into an agreement with FNS for the distribution of commodities on an Indian reservation.

(h) *Urban place* means a town or city with a population of 10,000 or more.

[49 FR 32756, Aug. 16, 1984, as amended at 59 FR 1449, Jan. 11, 1994; 64 FR 73385, Dec. 30, 1999]

#### § 254.3 Administration by an ITO.

(a) *Applicability of part 253.* All of the provisions of part 253 are herein incorporated and apply to part 254, except as specifically modified by part 254.

(b) Section 253.4 Administration, does not apply and is replaced by § 254.3.

(c) *Federal administration.* Within the Department of Agriculture, the Food and Nutrition Service (FNS), shall be responsible for the Food Distribution Program. FNS shall have the power to determine the amount of any claim and to settle and adjust any claim against an ITO.

(d) *ITO administration.* The ITO, acting as State agency, shall be responsible for the Food Distribution Program within the approved FNS service